



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/159998

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on October 02, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's supportive home care (SHC) hours and self-directed personal care (SDPC) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Carrie Haugen

Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is enrolled in the IRIS program. She lives with family.

2. Petitioner's primary diagnoses include dementia, arthritis with chronic pain and limited range of motion, and hypertension.
3. On May 21, 2014, a home visit and a Long Term Care Functional Screen (LTCFS) were completed for the Petitioner. It assessed the Petitioner's needs as follows:

Bathing – Level 2 – help needed (supervision, cueing, hands-on), helper must be present.

Dressing – Level 2 – help needed (supervision, cueing, hands-on), helper must be present.

Eating – Level 1 – help needed, helper need not be present; needs assistance cutting food.

Mobility – Level 2 – help needed (supervision, cueing, hands-on), helper must be present; uses wheelchair; unable to self-propel.

Toileting – Level 2 – help needed (supervision, cueing, hands-on), helper must be present. Has incontinence daily; wears incontinence products; needs assist to use the commode during the day if not having a lot of pain.

Transferring – Level 2 – help needed (supervision, cueing, hands-on), helper must be present.

Meal Preparation – Level 3 – needs help with every meal; unable to grocery shop; unable to prepare a meal because she cannot self-propel around kitchen and is too weak to make a meal or get herself a snack.

Medication Administration/Management – Level 2b – needs help at least 1x/day, 3-7 days/week; cannot direct the task.

Money Management – Level 2 – needs help from another person with all transactions.

Laundry and/or Chores – Level 2 – needs help more than once/week.

Telephone – Level 1b – Lacks cognitive or physical abilities to use phone independently. Has working telephone or access to one.

Transportation – Level 2 – can't drive due to physical, psychiatric, or cognitive impairment (including no license d/t medical problems).

It is noted that the Petitioner was removed from the [REDACTED] Group due to unknown date when diagnoses occurred. It is believed that the Petitioner was under age 65 at the time of diagnoses. Petitioner meets the criteria for [REDACTED] Group and Alzheimer's/Other Irreversible [REDACTED] due to diagnoses that include hypertension, osteoarthritis in knees and dementia. The Petitioner's arthritis significantly interferes with at least one major life activity including self-care, walking and the capacity for independent living. It is noted that the Petitioner has constant pain in knees and joints.

Petitioner requires overnight care/supervision. She is toileted every 2 hours throughout the night and is repositioned every 2 hours.

Petitioner no longer participates in range of motion program.

4. Upon completion of the LTCFS, the agency reduced the Petitioner's monthly IRIS allocation. The Petitioner requested a continuation of her previous IRIS allocation.
5. On June 30, 2014, a Personal Care Screening Tool (PCST) was completed. It assessed Petitioner's needs as follows:

Bathing – Level D – Petitioner is unable to effectively participate in bathing and is totally bathed by another person due to arthritis, chronic pain, dementia and inability to follow cues.

Dressing – Upper – Level D – Petitioner needs partial physical assistance due to arthritis, chronic pain in shoulders, dementia and inability to follow cues; needs guidance with putting arms in sleeves and raising arms up.

Dressing – Lower – Level D – Petitioner depends entirely upon another person due to arthritis, chronic pain in knees, dementia and inability to follow cues; needs complete physical assistance with putting on pants, socks, shoes.

Grooming – Level E – Petitioner needs partial physical assistance due to arthritis, chronic pain, dementia and inability to follow cues; needs oral care set up, washcloth prep and set up; assistance with hair care, applying lotion and deodorant and clipping nails.

Eating – Level A – feeds self.

Mobility – Level D – needs physical help; uses wheelchair for mobility, needs complete assistance to operate and maneuver throughout house.

Toileting – Level D – needs physical help from another 3x/day.

Toileting – Incontinence care – Level E – needs physical help 2x/day; incontinent of bowel/bladder.

Transferring – Level D – needs physical help; caregiver uses a pivot, slide transfer; unable to bear weight for short periods.

Skin Care – needs assistance applying prescription skin cream 2x/day.

6. Upon completion of the PCST, the agency determined it could not continue 132 hours/month of SHC. On July 31, 2014, the agency issued a Notice of Action to the Petitioner informing her that her SHC hours would decrease from 132 hours/month to 127 hours/month effective August 25, 2014. The notice also informed the Petitioner that her SDPC hours would increase from 127 hours/month to 134 hours/month effective August 4, 2014.
7. The Petitioner has Self-Directed Personal Cares (SDPC) as part of her Individual Support and Service Plan (ISSP). Effective August 4, 2014, the Petitioner's SDPC hours were increased from 127 hours/month to 134 hours/month.
8. On August 20, 2014, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. Id., §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." Id. §441.468.

Supportive Home Care (SHC) is the provision of a range of services for participants who require assistance to meet their daily living needs, ensure adequate functioning in their home, and permit safe access to the community. This service may not duplicate any service that is provided under another waiver service definition.

The Petitioner's IRIS allocation was decreased. As a result, the agency reviewed the Petitioner's ISSP. The agency asserts that there was overlap between the Petitioner's SDPC services incidental to tasks and the Petitioner's SHC hours. The agency was able to increase the Petitioner's SDPC hours from 127 hours/month to 134 hours/month at the same time that the SHC hours were reduced from 132 hours/month to 127 hours/month. The SDPC hours cover all of the Petitioner's activities of daily living as well as services incidental to tasks which includes changing bed linens, laundering bed linens and clothing, light cleaning, purchasing food, preparing meals and cleaning dishes. These services overlap with supportive home care services which include meal preparation, shopping, laundry, house cleaning, simple home repairs, snow shoveling, lawn mowing and running errands.

The total hours of SHC and SDPC hours for the Petitioner increased from 249 hours/month to 251 hours/month. The agency concedes that the Petitioner's condition has not changed but asserts that the Petitioner's total hours of care between the SHC hours and SDPC hours was increased and the re-allocation of hours between SHC and SDPC will not adversely affect the Petitioner. It asserts that there was an overlap of household chores and other SHC hours with the "services incidental to tasks" in the SDPC hours.

The Petitioner's daughter testified that the Petitioner's condition has deteriorated and the SHC hours should not be decreased. She also testified that her own health has deteriorated and she is unable to continue to provide as much support to her mother as she has in the past.

The Petitioner's daughter did not present any specific evidence that the Petitioner's condition has changed and that the re-allocation of hours between SHC and SDPC will adversely affect the Petitioner. She could not demonstrate how re-allocating SHC hours in a way that increased the total hours of care available to the Petitioner would have a negative impact on the Petitioner. Based on the evidence presented, I conclude the agency properly assessed the Petitioner's needs and properly re the SHC hours after SDPC hours were increased to cover similar home maintenance and other home care services.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner's SHC and SDPC hours.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

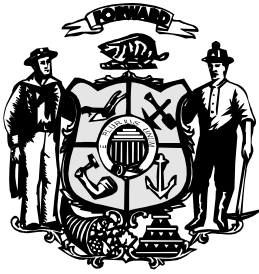
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of November, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 10, 2014.

Bureau of Long-Term Support